



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201323044

MAR 12 2013

Uniform Issue List: 402.00-00

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Legend:

Taxpayer A	=
Plan B	=
Plan C	=
Company D	=
Financial Institution E	=
IRA F	=
Account G	=
Bank H	=
Amount 1	=

Dear :

This letter is in response to a request for a letter ruling dated April 12, 2012, as modified and supplemented by additional correspondence dated June 22, July 17, September 5, and 19, 2012, and January 8, 2013, from your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(B) of the Internal Revenue Code ("Code"), regarding the distribution of Amount 1 from Plan B.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A represents that he received a distribution of Amount 1 from Plan B on December 5, 20____. Taxpayer A asserts that his failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 402(c)(3) was due to extreme stress associated with his forced retirement which adversely impacted his ability to manage his financial affairs and understand advice from his tax preparer. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Taxpayer A participated in Plan B, a defined benefit pension plan, and Plan C, a 401(k) plan, with Company D. In late October, 2011, Taxpayer A was forced to retire from Company D due a change in management. After receiving information regarding his options for the benefits in Plans B and C from Company D, Taxpayer A met with a representative of Financial Institution E. On December 15, 20____, Taxpayer A opened IRA F with Financial Institution E and on December 20, 20____, Taxpayer A executed a trustee to trustee transfer of his benefit in Plan C to IRA F.

Taxpayer A also consulted his tax preparer regarding a possible distribution from Plan B. She advised that the dollars distributed do not have to be the same ones rolled over to an IRA. Taxpayer A represents that he understood the advice from his tax preparer to mean that his investment account could properly accept a rollover of a distribution from his qualified retirement plan (Plan B) and the investment would remain tax deferred. On December 5, 20____, Taxpayer A received from Plan B a check totaling Amount 1 and deposited it into Account G, a non-IRA account with Financial Institution H. In mid-February, his tax preparer informed him the funds were not in an IRA and he had missed his 60-day rollover deadline.

Taxpayer A has submitted letters, dated July 12, 20____, and September 5, 20____, from his therapist and psychologist, respectively, stating that he was under extreme stress following the loss of his job. The therapist concludes that Taxpayer A's symptoms represent "marked distress and significant impairment in social and occupational functioning." Further, she states that "it is my opinion that the stress Taxpayer A experienced when forced to retire early was severe enough to interfere with the management of his financial affairs." The psychologist states that "it is reasonable to conclude that Taxpayer A was suffering from depression and anxiety, resulting in impairment in his ability to manage his financial affairs."

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 402(c)(3)(A) of the Code with respect to the distribution of Amount 1.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of

property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) of the Code states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9).

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) of the Code provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31) of the Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to sections 408(d)(3)(I) and 402(c)(3)(B) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted in this case indicates that Taxpayer A was under severe emotional distress from the unexpected loss of his job which led him to misinterpret the advice received from his tax preparer and deposit Amount 1 in a non-IRA account, thinking it was a good rollover.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of

Amount 1 from Plan C. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute no more than Amount 1 into an eligible retirement plan or rollover IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact (I.D. #), at () .

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437

cc: